

# EXHIBIT 15

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In Re: : Chapter 11  
: :  
: Case No.  
W.R. GRACE & CO., et al, : 01-01139 JKF  
: :  
: (Jointly  
Debtors : Administered)

Friday, May 15, 2009

Oral deposition of DAVID T.

AUSTERN, ESQUIRE, taken pursuant to  
notice, was held at the offices of ORRICK  
HERRINGTON & SUTCLIFFE, LLP, Columbia  
Center, 1152 15th Street, N.W.,  
Washington, DC 20005-1706, commencing at  
10:07 a.m., on the above date, before  
Lori A. Zabielski, a Registered  
Professional Reporter and Notary Public  
in and for the Commonwealth of  
Pennsylvania.

MAGNA LEGAL SERVICES  
Seven Penn Center  
1635 Market Street  
8th Floor  
Philadelphia, Pennsylvania 19103

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Page 4

1 APPEARANCES:  
 2 DRINKER BIDDLE & REATH, LLP  
 3 BY: MICHAEL F. BROWN, ESQUIRE  
 4 One Logan Square  
 5 18th & Cherry Streets  
 6 Philadelphia, Pennsylvania 19103-6996  
 7 215.988.2988  
 8 (brownmf@dbr.com)  
 9 (jeffrey.boerger@dbr.com)  
 10 Representing OneBeacon America Insurance  
 11 Company, Seaton Insurance Company,  
 12 Government Employees Insurance Company,  
 13 Columbia Insurance Company f/k/a Republic  
 14 Insurance Company  
 15 ORRICK HERRINGTON & SUTCLIFFE, LLP  
 16 BY: JONATHAN P. GUY, ESQUIRE  
 17 ROGER FRANKEL, ESQUIRE  
 18 JOSHUA M. CUTLER, ESQUIRE  
 19 Columbia Center  
 20 1152 15th Street, N.W.  
 21 Washington, DC 20005-1706  
 22 202.339.8427  
 23 (jguy@orrick.com)  
 24 Representing Future Claimants  
 Representative  
 25 CAPLIN & DRYSDALE, CHARTERED  
 26 BY: JEFFREY A. LIESEMER, ESQUIRE  
 27 One Thomas Circle, NW  
 28 Suite 1100  
 29 Washington, DC 20005  
 30 202.862.5000  
 31 (jal@capdale.com)  
 32 Representing Grace, Official Committee of  
 33 Asbestos Personal Injury Claimants  
 ("ACC")

1 APPEARANCES (continued)  
 2 VORYS, SATER, SEYMOUR AND PEASE, LLP  
 3 BY: WILLIAM J. POHLMAN, ESQUIRE\*  
 4 TIFFANY STRELOW COBB, ESQUIRE\*  
 5 (\*VIA TELECONFERENCE)  
 6 52 East Gay Street  
 7 Columbus, Ohio 43215  
 8 614.464.8322  
 9 (wpohlman@vorys.com)  
 10 (tscobb@vorys.com)  
 11 Representing The Scotts Company, LLC  
 12 COHN WHITESELL & GOLDBERG, LLP  
 13 BY: CHRISTOPHER M. CANDON, ESQUIRE  
 14 101 Arch Street  
 15 Boston, Massachusetts 02110  
 16 617.951.2505  
 17 (candon@cwg11.com)  
 18 Representing the Libby Claimants  
 19 SPEIGHTS & RUNYAN  
 20 BY: DANIEL H. SPEIGHTS, ESQUIRE\*  
 21 (\*VIA TELECONFERENCE)  
 22 200 Jackson Avenue East  
 23 P.O. Box 685  
 24 Hampton, South Carolina 29924  
 25 803.943.4444  
 26 (dspeights@speightsrunyan.com)  
 27 Representing Anderson Memorial Hospital  
 28 TUCKER ARENSBERG, P.C.  
 29 BY: MICHAEL A. SHINER, ESQUIRE\*  
 30 (\*VIA TELECONFERENCE)  
 31 1500 One PPG Place  
 32 Pittsburgh, Pennsylvania 15222  
 33 412.594.5586  
 34 (mshiner@tuckerlaw.com)  
 35 Representing Certain London Market

Page 3

Page 5

1 APPEARANCES (continued)  
 2 KIRKLAND & ELLIS, LLP  
 3 BY: THEODORE L. FREEDMAN, ESQUIRE\*  
 4 (\*VIA TELECONFERENCE)  
 5 Citigroup Center  
 6 153 East 53rd Street  
 7 New York, New York 10022-4611  
 8 212.446.4800  
 9 (theodore.freedman@kirkland.com)  
 10 Representing the Debtors  
 11 THE LAW OFFICES OF JANET S. BAER, P.C.  
 12 BY: JANET S. BAER, ESQUIRE  
 13 70 West Madison Street  
 14 Suite 2100  
 15 Chicago, Illinois 60602  
 16 312.641.2162  
 17 Representing the Debtors  
 18 SIMPSON THACHER & BARTLETT, LLP  
 19 BY: ELISA ALCABES, ESQUIRE  
 20 KAREN E. ABRAVANEL, ESQUIRE\*  
 21 (\*VIA TELECONFERENCE)  
 22 425 Lexington Avenue  
 23 New York, New York 10017-3954  
 24 212.455.3133  
 25 (ealcabes@stblaw.com)  
 26 (kabravanel@stblaw.com)  
 27 Representing Travelers Casualty and  
 28 Surety Company

1 APPEARANCES (continued)  
 2 BILZIN SUMBERG BAENA PRICE & AXELROD, LLP  
 3 BY: MATTHEW I. KRAMER, ESQUIRE\*  
 4 (\*VIA TELECONFERENCE)  
 5 200 South Biscayne Boulevard  
 6 Suite 2500  
 7 Miami, Florida 33131-5340  
 8 305.450.7246  
 9 (mkramer@bilzin.com)  
 10 Representing Property Damage Committee  
 11 STROOCK & STROOCK & LAVAN, LLP  
 12 BY: DANIEL J. HARRIS, ESQUIRE\*  
 13 (\*VIA TELECONFERENCE)  
 14 180 Maiden Lane  
 15 New York, New York 10038-4982  
 16 212.806.5400  
 17 (djharris@stroock.com)  
 18 Representing Official Committee of  
 19 Unsecured Creditors  
 20 CROWELL & MORING, LLP  
 21 BY: MARK PLEVIN, ESQUIRE  
 22 NOAH S. BLOOMBERG, ESQUIRE  
 23 1001 Pennsylvania Avenue NW  
 24 Washington, DC 20004-2595  
 25 202.624.2913  
 26 (mplevin@crowell.com)  
 27 (nbloomberg@crowell.com)  
 28 Representing Fireman's Fund Insurance  
 29 (Surety Bond)  
 30 STEVENS & LEE, P.C.  
 31 BY: JOHN D. DEMMY, ESQUIRE  
 32 1818 Market Street, 29th Floor  
 33 Philadelphia, Pennsylvania 19103-1702  
 34 215.751.2885  
 35 (jdd@stevenslee.com)

1 APPEARANCES (continued)  
 2  
 3 ALAN B. RICH LAW OFFICES  
 BY: ALAN B. RICH, ESQUIRE  
 4 Elm Place, Suite 4620  
 1401 Elm Street  
 5 Dallas, Texas 75202  
 214.744.5100  
 6 (arich@alanrichlaw.com)  
 Representing Property Damage FCR  
 7  
 8 CONNOLLY BOVE LODGE & HUTZ, LLP  
 BY: JEFFREY C. WISLER, ESQUIRE  
 The Nemours Building  
 1007 North Orange Street  
 P.O. Box 2207  
 11 Wilmington, Delaware 19899  
 302.88.6528  
 12 (jwisl@cbjh.com)  
 Representing Maryland Casualty  
 13  
 14 ECKERT SEAMANS CHERIN & MELLOTT, LLC  
 BY: EDWARD J. LONGOSZ, II, ESQUIRE  
 1747 Pennsylvania Avenue, NW  
 12th Floor  
 Washington, DC 20006  
 202.659.6619  
 (elongs@eckertseamans.com)  
 Representing Maryland Casualty and Zurich  
 18  
 19 COZEN O'CONNOR  
 BY: JACOB C. COHN, ESQUIRE  
 1900 Market Street  
 Philadelphia, Pennsylvania 19103-3508  
 22 215.665.2147  
 (jcohn@cozen.com)  
 Representing Federal Insurance Company  
 23  
 24

1 APPEARANCES (continued)  
 2  
 3 CUYLER BURK, P.C.  
 BY: STEFANO V. CALOGERO, ESQUIRE  
 4 Parsippany Corporate Center  
 Four Century Drive  
 5 Parsippany, New Jersey 07054  
 973.734.3200  
 6 (scalogero@cuyler.com)  
 Representing Alistate Insurance Company  
 7  
 8 GOODWIN PROCTER, LLP  
 BY: BRIAN H. MUKHERJEE, ESQUIRE\*  
 (\*VIA TELECONFERENCE)  
 10 901 New York Avenue, N.W.  
 Washington, DC 20001  
 11 202.346.4124  
 (bmukherjee@goodwinprocter.com)  
 Representing CNA Insurance  
 12  
 13 WOMBLE CARLYLE SANDRIDGE & RICE, PLLC  
 BY: KEVIN J. MANGAN, ESQUIRE\*  
 (\*VIA TELECONFERENCE)  
 14 222 Delaware Avenue  
 Suite 1501  
 16 Wilmington, Delaware 19801  
 17 302.252.4361  
 (kmangan@wcsr.com)  
 Representing State of Montana  
 18  
 19 PEPPER HAMILTON, LLP  
 BY: LINDA J. CASEY, ESQUIRE\*  
 (\*VIA TELECONFERENCE)  
 20 3000 Two Logan Square  
 Philadelphia, Pennsylvania 19103  
 21 215.981.4000  
 (caseyl@pepperlaw.com)  
 Representing BNSF Railway Company  
 22  
 23  
 24

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## PROCEEDINGS

MR. GUY: We will follow the federal rules.

DAVID T. AUSTERN, ESQUIRE, after having been first duly sworn, was examined and testified as follows:

## EXAMINATION

BY MR. BROWN:

Q. Good morning, Mr. Austern. My name is Michael Brown. I represent OneBeacon American Insurance Company, Seaton Insurance Company, GEICO, and Republic Insurance Company.

Could you state your full name for the record, please?

A. David Thomas Austern.

Q. Have you ever been deposed before?

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## DEPOSITION SUPPORT INDEX

Direction to Witness Not to Answer:

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Request for Production of Documents:

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NONE			

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NONE			

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NONE			

A. Yes.

Q. How many times?

A. Somewhere between 25 and 30 times.

Q. So it's fair to say that you are familiar with the protocol for a deposition then?

A. I am.

Q. Okay. Can you give me a summary of your professional background?

A. I was an assistant district attorney in the New York County District Attorney's Office for four years; I was an assistant United States attorney in the United States Attorney's Office in Washington, D.C. for four years; I was a law professor for two years; I was in the private practice of law for something like 12 years; and I've been general counsel of the Manville Personal Injury Settlement Trust, and I have had some other asbestos matters for the last 21 and a half years. That doesn't add up to 45, and it should, but...

1           **Q. Those are estimates, I take**  
 2            **it?**

3            A. Those are estimates, yes.

4           **Q. What did you do in**  
 5           **preparation for today's deposition?**

6           A. I reviewed some documents,  
 7           and I spoke to counsel.

8           **Q. What documents did you**  
 9           **review?**

10          A. I also reviewed some  
 11         transcripts.

12          I reviewed the Personal  
 13         Injury Trust Agreement; the Trust  
 14         Distribution Process -- the Personal  
 15         Injury Trust Distribution Process; the  
 16         Transfer Agreement; the Cooperation  
 17         Agreement; I reviewed Ms. Biggs' latest  
 18         estimation report; Dr. Peterson's latest  
 19         report; Dr. Florence's latest report;  
 20         Dr. Whitehouse's -- one of  
 21         Dr. Whitehouse's reports -- I am sorry --  
 22         two of Dr. Whitehouse's reports; the  
 23         rebuttal to those reports from Dr. Welsh  
 1         and Dr. Freedman; the objections filed by

1           thing in preparation of the deposition.  
 2           I listened to parts of, albeit not all,  
 3           of the Lockwood deposition.

4           **Q. Did you meet with counsel in**  
 5           **preparation for the deposition?**

6           A. Yes.

7           **Q. When?**

8           A. Last Friday and yesterday.

9           **Q. And for how long last**

10          **Friday? What period of time did you meet**  
 11         **with counsel?**

12          A. I confess I don't remember,  
 13          but it was several hours.

14          **Q. And the more recent meeting?**

15          A. I would say three hours.

16          **Q. Was it just counsel for the**  
 17         **Future Claimants' Representative or were**  
 18         **other Plan proponent counsel present?**

19          A. No. There were no other  
 20         Plan proponent counsel.

21          **Q. In reviewing Mr. Lockwood's**  
 22         **deposition testimony, was there anything**  
 23         **in his transcript with which you**  
 24         **disagreed?**

1         the Libby claimants and by one or more  
 2         insurance companies, and I am not sure I  
 3         know which ones; my prior deposition in  
 4         this case; my prior deposition in the  
 5         Combustion Engineering case; my testimony  
 6         in the Combustion Engineering case. I  
 7         may have left something out, but I think  
 8         those are most of the documents I  
 9         reviewed.

10         **Q. Okay. And you also**  
 11         **mentioned that you had reviewed some**  
 12         **transcripts?**

13         A. Those were the depositions  
 14         and trial testimony -- oh, excuse me.  
 15         Yes. I reviewed Mr. Lockwood's  
 16         deposition.

17         **Q. Did you actually review the**  
 18         **Amended Plan of Reorganization?**

19         A. Yes -- and excuse me -- and  
 20         the Disclosure Statement.

21         **Q. And over what period of time**  
 22         **did you review all these materials in**  
 23         **preparation for your deposition?**

24         A. Two weeks. I did one other

1         A. I don't remember -- nothing  
 2         occurs to me, although if you showed me a  
 3         question and answer, I might say I  
 4         disagreed. But I don't recall anything.

5         **Q. Okay. When you listened in**  
 6         **on a portion of the deposition, was there**  
 7         **anything that you heard by way of an**  
 8         **answer by Mr. Lockwood that struck you as**  
 9         **inaccurate?**

10         A. Not that I recall.

11         **Q. Okay. Now, you mentioned**  
 12         **that you had reviewed the Disclosure**  
 13         **Statement, the Plan, the PI Trust**  
 14         **Agreement I assume you were referring to,**  
 15         **the PI Trust Distribution Procedures, the**  
 16         **Transfer Agreement, and the Cooperation**  
 17         **Agreement?**

18         A. Yes.

19         **Q. Do you understand all of**  
 20         **those documents?**

21         A. No.

22         **Q. Are there particular**  
 23         **documents that you understand better than**  
 24         **others?**

1           **Q. You will agree with me that**  
 2    **Section 2.2(f) sets forth a number of**  
 3    **different items for which the trustees**  
 4    **need the consent of the TAC and the**  
 5    **Future Claimants' Representative,**  
 6    **correct?**

7           A. Yes.

8           **Q. It goes on from Romanette 1**  
 9    **to Romanette 15, correct?**

10          A. Yes.

11          **Q. Why is there a need to have**  
 12    **the consent of the Future Claimants'**  
 13    **Representative and the TAC on these**  
 14    **particular items rather than simply**  
 15    **consultation?**

16          A. My answer is the same, and I  
 17    will speak forgetting the TAC, as the  
 18    Future Claimants' Representative, I want  
 19    the right to under certain circumstances  
 20    not agree to a decision by the trustees  
 21    and have that be the end of the decision.

22          **Q. Well, it's not actually the**  
 23    **end of the decision, is it?**

4           A. No. There are ways of

1    list of them.

2           A. Dean Trafel, Lewis  
 3    Sifford, and Harry Huge.

4           **Q. And do you know each of**  
 5    **those gentlemen?**

6           A. Well, in the case of  
 7    Mr. Huge and Mr. Trafel, I do know  
 8    them. In the case of Mr. Sifford, I have  
 9    met him on a number of occasions.

10          **Q. Okay. What is the**  
 11    **professional background of Mr. Huge?**

12          A. Let's see. I first met him  
 13    about 40 years ago at the Justice  
 14    Department. I am sorry. He is a lawyer.  
 15    He has been with the government. He has  
 16    been in private practice. Do you want  
 17    more?

18          **Q. Does he have experience with**  
 19    **asbestos trusts?**

20          A. Yes, he does.

21          **Q. What is that experience?**

22          A. He is a trustee of Armstrong  
 23    and I believe a trustee of OCF.

24          **Q. How long has he had the role**

1    resolving that difference.

2          **Q. And what are those?**

3          A. Well, I may confuse this  
 4    with the Manville Trust, but you can  
 5    seek, shall we say, guidance from the  
 6    bankruptcy court.

7          **Q. By that, you mean a ruling?**

8          A. Yes, yes.

9          **Q. If your consent has been**  
 10    **unreasonably withheld in the views of the**  
 11    **trustees?**

12          A. That's correct.

13          **Q. Is there anything in Section**  
 14    **524(g) to your knowledge that requires a**  
 15    **Trust, an asbestos Trust, to have a**  
 16    **consultation and consent provisions that**  
 17    **are set forth in this Trust Agreement?**

18          A. I do not know of anything in  
 19    524(g) like that.

20          **Q. Do you know who the**  
 21    **designated trustees are for the Asbestos**  
 22    **PI Trust?**

23          A. Yes.

24          **Q. Okay. Who are they? Or**

1    **of trustee in Armstrong?**

2          A. I met with him shortly after  
 3    he was appointed, and I should be able to  
 4    remember that. I think four or five  
 5    years.

6          **Q. And how about as a trustee**  
 7    **in OCF?**

8          A. I don't know.

9          **Q. Okay. Why don't you tell me**  
 10    **what the professional background of**  
 11    **Mr. Sifford is?**

12          A. I know him less well.

13          Mr. Sifford is a practicing lawyer in a  
 14    law firm, and he is an Armstrong trustee,  
 15    I believe. And that's, I believe, the  
 16    first time I met him, and thus I looked  
 17    him up. And according to  
 18    Martindale-Hubbell, he does both personal  
 19    injury plaintiff's work and personal  
 20    injury defense work. I am getting close  
 21    to exhausting my knowledge of him.

22          **Q. Okay. Is the personal**  
 23    **injury work that he does, both defense**  
 24    **and plaintiff's work, asbestos-related?**

1 A. It is not as far as I know.  
 2 Q. Do you know what it does

3 relate to?

4 A. No.

5 Q. Okay. Do you know how long  
 6 he has been a trustee of the Armstrong  
 7 Trust?

8 A. The same period of time

9 Mr. Huge has been, but I don't remember  
 10 when that started.

11 Q. I thought you said that one  
 12 was four to five years ago?

13 A. Four to five years ago. I  
 14 don't remember exactly.

15 Q. All right. And what is the  
 16 professional background of Mr. Trafelet?

17 A. Before I get to that, let me  
 18 explain. Armstrong was confirmed, and  
 19 for a long time, there was no activity  
 20 for reasons that allude me. So I can't  
 21 remember exactly when I got involved in  
 22 talking to those people.

23 Q. Okay.

24 A. Mr. Trafelet is a lawyer who

1 Q. And would I be correct that  
 2 he's been that for four or five years?

3 A. Yes.

4 Q. Let's go to Section 4.9 of  
 5 the Trust Agreement. Take a moment to  
 6 read that, if you would.

7 A. Okay.

8 Q. The second-to-the-last  
 9 sentence in Section 4.9 says, "No Trustee  
 10 shall act as an attorney for any person  
 11 who holds an asbestos claim."

12 Do you see that?

13 A. Yes.

14 Q. What's the reason for that?

15 A. To avoid conflicts.

16 Q. What type of conflicts?

17 A. Well, you are a trustee of a  
 18 Plan paying somebody; you shouldn't be  
 19 paying your client.

20 Q. Is there any other reason?

21 A. Not that I know of.

22 MR. BROWN: Mark this as  
 23 Austern-4.

24 (Austern-4 marked for

1 was a judge of, I believe, the Circuit  
 2 Court in Cook County, Illinois for a  
 3 period of time, and he is an asbestos  
 4 trustee of -- it seems to me, he is the  
 5 sole trustee of the Loomis Trust and also  
 6 a Futures Rep, I believe, at Armstrong.

7 Q. Okay. And he was one of the  
 8 gentlemen that you mentioned that, if I  
 9 remember correctly, the Asbestos PI  
 10 Committee, otherwise known as the ACC,  
 11 wanted to have the role that you have?

12 A. Yes.

13 Q. Do you know how long he has  
 14 been a trustee of the Loomis Trust?

15 A. Since it was confirmed. And  
 16 this I really should know, but I think it  
 17 was confirmed about three years ago.

18 Q. Okay. And do you know  
 19 whether he was the FCR in Armstrong  
 20 before a plan was confirmed?

21 A. I do not know.

22 Q. Okay. But he is the FCR for  
 23 the Trust?

24 A. Yes, I believe he is.

1 identification at this time.)

2 BY MR. BROWN:

3 Q. Exhibit-4, Mr. Austern, is  
 4 Exhibit 6 to the Exhibit Book. My first  
 5 question for you is, can you identify it?

6 A. It's the Asbestos Insurance  
 7 Transfer Agreement, which is part of the  
 8 Plan, as you point out.

9 Q. And I believe you said this  
 10 is one of the documents that you had  
 11 reviewed; am I correct?

12 A. Yes.

13 Q. Do you understand this  
 14 agreement?

15 A. Not in its entirety.

16 Q. Okay. Are there particular  
 17 provisions of this agreement that you do  
 18 not understand that you could direct my  
 19 attention to?

20 A. Well, I would have to look  
 21 at it for a moment. I am not sure I  
 22 understand all of the representations and  
 23 warranties and some of the terms in them.  
 24 There are two schedules, if I remember